IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2747 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKKER VARSHABEN ARVINDBHAI

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No. 2747 of 1997

MR KB PUJARA for Petitioner No. 1

MS.ARCHANA RAVAL, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/05/2005

ORAL JUDGEMENT

The petitioner, a qualified doctor-Bachelor of Dental Surgery is before this Court challenging order

dated 27.03.1997 whereby the services of the petitioner are brought to an end, on the ground that on the date of appointment the petitioner had not completed the internship.

The facts of the case are that the petitioner was communicated by Office Order dated 12.09.1996 that she is selected for being appointed as Dental Surgeon. It was mentioned in the said Office Order that the aforesaid candidates will have to obtain, "detailed appointment orders' by reporting to the officer mentioned in column (4). In item-5 of the said Office Order it is mentioned that, 'the Divisional Deputy Director (Health & Medical Services), Rajkot' will issue appointment order to the petitioner and before that the authority will verify the credential in original. In the same Office Order there is an enclosure providing conditions for appointment. The first condition is that, 'an appointee will have to report at the place of appointment, 'within seven days from the date of receipt of appointment order', failing which the appointment order will stand automatically cancelled and no representation will be taken into consideration'. It is the case of the petitioner that accordingly the Divisional Deputy Director (Health and Medical Services), Rajkot issued an order of appointment on 30.09.1996 and pursuant to that the petitioner reported for duty on 01.10.1996 and she was allowed to resume.

2. Mr.Pujara, learned advocate appearing for the petitioner vehemently submitted that the order under challenge dated 27.03.1997 is an act of 'non application of mind' inasmuch as the ground on which appointment of the petitioner is cancelled is, 'non existent'. He submitted that the petitioner had completed her internship on 30.09.1996. Thereafter as mentioned in Office Order dated 12.09.1996 she reported to the Divisional Deputy Director (Health & Medical Services), Rajkot who issued appointment order dated 30.09.1996 pursuant to which she reported for duty on 01.10.1996 and she was allowed to resume. He submitted that in view of these facts to terminate the services of the petitioner on the ground that on the date of appointment the petitioner did not complete her internship is nothing but an act of non application of mind and therefore, requires to be quashed and set aside by this Court.

3. Mr.Pujara, learned advocate for the petitioner also submitted that the order under challenge is vitiated on the ground of violation of principles of natural justice as the petitioner was not given any opportunity

to explain her case to the authorities and put forward the relevant facts for consideration of the authority.

Learned Assistant Government Pleader is not able to point out anything on record to show that before issuing order dated 27.03.1997 the petitioner was afforded an opportunity of hearing to present her case. On that short ground the impugned order deserves to be quashed and set aside.

4. Learned Assistant Government Pleader, Ms.Archana Raval submitted that order dated 12.09.1996 was the appointment order and what is referred thereafter was 'posting order' and therefore, on the date of appointment, i.e. 12.09.1996 the petitioner had not completed internship and therefore, order dated 27.03.1997 is just and proper.

5. Learned Assistant Government Pleader could not explain that if 12.09.1996 was the appointment order why was she allowed to report on 01.10.1996. She was also not able to explain as to why it was mentioned in the said Office Order that, 'the authority mentioned in column (4) will issue appointment orders after verifying the credentials in original'. She is also not able to explain as to who is the appointing authority in case of the petitioner, i.e. whether a Chief Personnel Officer or Head of the Department, i.e. Divisional Deputy Director (Health & Medical Services), Rajkot. This information does have bearing on the facts of the case.

6. On perusal of the documents and averments made in the petition and the contents of the affidavit in reply, this Court is of the opinion that the authorities have failed in appreciating the facts of the case and by sheer non application of mind issued order dated 27.03.1997 which deserves to be quashed and is quashed.

7. The petition is allowed. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

karim